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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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JAY H. CONNELLY

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8464

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08/29/2007

EXAMINER

HUYNH, SON P

ART UNIT

PAPER NUMBER

2623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/882,205	Applicant(s) CONNELLY, JAY H.	
	Examiner Son P. Huynh	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 43-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/25/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed June 22, 2007 have been fully considered but they are not persuasive.

Applicant argues Ellis is describing a scenario in which the system has already determined when a movie is to be broadcast. Ellis is not describing a user being able to provide input as to when a movie is to be broadcast. A user in Ellis has no input into when content is to be broadcast because broadcast times in Ellis are predetermined. Therefore, this element is not taught in Ellis (page 8, paragraph 3). This argument is respectfully traversed.

The element "a user being able to provide input as to when a movie is to be broadcast" is not recited in the claims (Note: if this element is recited in the claim, it is still met by movies on demand or VOD or NVD feature in Ellis, see Ellis, paragraphs 0089, 0115, 0124, incorporated by reference in its entirety, US 2003/0149988 A1, paragraph 0097). Claim 1 recites, "refining a list of available content in response to the feedback to create the future broadcast schedule". Ellis discloses a menu comprises a plurality of niche hubs. When the user selects a niche hub and/or future time slot, only programs/events information associated with the selected niche hub and future time are retrieved; the retrieved information are used to create/generate a broadcast listings (for future

selected time) and displayed on the screen (see include, but are not limited to, paragraphs 0115,0119,0120,0130-0131,0149,0150,0151, 0157, figures 2, 6-9,11, 31; incorporated by references in their entirety US 2003/0149988: figures 10-112b, paragraphs 0123-0124, 0127; US 20050028208: paragraphs 0073). The limitation "create the future broadcast schedule" is interpreted as to create/generate and/or to display future broadcast listings associated the selected niche hub and/or selected future time slot" (e.g., future broadcast schedule for pay per view programs, for movies on demand, or coming soon events, etc.). Therefore, the recited limitation "refining a list of available content in response to the feedback to create the future broadcast schedule" is interpreted as filtering a program guide listings of available content in response to user selection of particular niche hub and/or future time slot, to create/generate and/or display future broadcast listings associated the selected niche hub and/or selected future time slot.

Applicant further argues the list provided to users in Payton is based on recommendations by the system (page 9, paragraph 1). This argument is respectfully traversed.

The Examiner agrees the list provided to users in Payton is recommended by the system. However, the recommendations list provided by the system is based on user feedback, rating of previous items, or subscriber profiles. The schedule processor, based on the feedback, rating, etc. received from the subscriber to merges the lists 44 of recommended items to prioritize the items from the most to the least frequently

recommended and places identifiers for these items in a refresh queue 47 for broadcast over the digital transport system... to the local users (see include, but are not limited to, col. 3, lines 10-33, col. 5, lines 6-67, col. 6, line 60-col. 7, line 46). Therefore, Payton discloses broadcast the available content listed in the refined list of available content, according to future broadcast schedule as prioritized by the refining, to the plurality of clients" (interpreted as broadcast the recommended items 36 listed in the updated recommended list of items, according to broadcast schedule as prioritized/queued by the refresh queue to the local users).

Applicant also argues combination of Ellis in view of Payton fails to disclose "wherein refining the list of available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be broadcast" as recited in claim 1. That is, in embodiments of the claimed invention, the user determines the order in which available content will be broadcast. In contrast, in Ellis, the order is predetermined and in Payton the order is predicted by the system. Because the combination of Ellis in view of Payton fails to teach each and every element of claim 1, the Examiner has failed to make out a prima facie case of obviousness of claim 1 over Ellis in view of Payton (page 9, paragraph 2). This argument is respectfully traversed.

The limitation "the user determines the order in which available content will be broadcast" is not recited in the claim, but instead, claim 1 recites ""wherein refining the list of available content prioritizes an order in which at least a portion of the available

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content described by the content descriptors will be broadcast" which is read by Ellis's disclosure as discussed in Office Action, mailed 3/26/07, page 4.

Alternatively, Payton further discloses the recommended list 44 comprises information of items 36 that are recommended to the users so the users can request items (36) on the recommended list 44 (see include, but are not limited to, figure 2, col. 6, lines 1-55); the feedback, including user request, user rating of items in previous' day broadcast, etc., is used to update the recommended items with updated list 44. The central distribution server with scheduling processor 46, merges the new additions to the list into a refresh queue, and prioritizes the items so that the items recommended for the largest number of subscribers are placed at the front of the queue and broadcast the items to subscribers (see include, but are not limited to, col. 3, lines 10-25; col. 5, lines 21-31, col. 6, line 60-col. 7, line 12, lines 36-46). Thus, the limitation "content descriptor" is alternatively interpreted as content information in recommended list 44. The limitation "refining the list of available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be broadcast" is alternatively interpreted as updating the recommended list 44 of available items prioritizes an order (e.g., items recommended for the largest number of subscribers are placed at the front of the queue) in which the recommended items (i.e., items 36) described by the information in recommended list 44 will be broadcast (according to the queue).

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For reasons given above, the combination of Ellis in view of Payton teaches each and every element of claim 1. Therefore, the Examiner has made out a prima facie case of obviousness of claim 1 over Ellis in view of Payton.

Rejections on the claims are discussed below.

Claims 13-42 have been canceled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12, 43-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (US 2004/0117831 –hereinafter referred to as E831) in view of Payton (US 5,790,935).

Regarding claim 1, E831 discloses a method, comprising:

broadcasting content descriptors, which describe available content being considered for potential inclusion in a future broadcast schedule, to a plurality of clients (broadcasting content descriptors such as category, channel, title, etc. (figures 2-5, 31) which describes available content being considered for inclusion in a future broadcast

schedule (figures 11, 22-27, 31), to plurality users of the user television equipments – see include, but are not limited to, figures 1b-1d, 4, paragraphs 0088-0089, 0092, 0094, 0099, 0124, 0131, 0195-0196, 0201, 0216);

receiving feedback from at least one of the plurality of clients regarding the content descriptors, the feedback being an indication from the at least one of the plurality of clients of the relative desirability of the available content described by the content descriptors (receiving feedback such as viewer selection of a niche hub, time slot, viewing viewer rating, vote, or viewing habits, etc. from at least one of the plurality of users, the feedback being an indication of the relative desirability of the available content described by the content descriptor e.g., two happy faces, one unhappy face, or one happy face, or favorite program, niche hub, etc., – see include, but are not limited to, figures 8, 11-18, 24-26, paragraphs 0156, 0160, incorporated by reference U.S. patent 7,185,355 (hereinafter referred to as E355), figures 7-14);

refining a list of available content in response to the feedback to create the future broadcast schedule (e.g., displaying a list of future broadcast schedule based on user preferences/profiles, or user selections, etc. see include, but are not limited to, paragraphs 0115, 0119, 0120, 130-131, 0136, 0149, 0150, 0157, and discussion in “Response to Arguments” above), wherein refining the list of available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be broadcast (e.g. the selected list of available content prioritizes/arranges in order of air times, or rating, etc. in which at least a portion of the available content (e.g., content title, a clip, program content, etc.) will be broadcast (see

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include, but are not limited to, paragraphs 0136-0138, 0157-0158, and discussion in the "Response to Arguments" above) ; and

broadcasting content listed in the refined list of available content, according to the future broadcast schedule to clients (broadcasting selected content/program listed in the selected list, according to the future broadcast schedule (e.g. air times), to users at user television equipments – see include, but are not limited to, paragraphs 0135, 0196, 202, 0216, 0239, 0250, incorporated by reference 2005/0262542, paragraphs, 0052, 0055, 0013).

However, E831 does not explicitly disclose available content listed in refined list is broadcast to the plurality of clients as prioritized by the refining list.

Payton discloses lists 44 of recommended items are updated based on requests, or preferences of subscribers; scheduling processor 46 merges the lists 44 of recommended items to prioritize the items 36 from the most to the least frequently recommended and places identifiers for these items in a refresh queue 47 for broadcast over the digital transport system 26 to the local users (see include, but are not limited to, col. 4, line 35-col. 5, line 57, col. 6, line 64- col. 7, 12 and discussion in the "Response to Arguments" above) is read on the limitation "broadcasting the available content listed in the refined list of available content, according to the future broadcast schedule as prioritized by the refining, to the plurality of clients". Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

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E831 to use the teaching as taught by Payton in order to at least improve bandwidth cost effectively (col. 4, lines 35-44).

Regarding claim 2, E831 in view of Payton teaches a method as discussed in the rejection of claim 1. E831 further discloses repeating operations of broadcasting further descriptive content, which further describes the available content listed in the refined list of available content, and receiving corresponding additional feedback to further refine the list of available content in response to additional feedback (broadcasting further descriptive content such as identifier, air time, or video clips, etc. of the movie according to the user preference, user selection, or user rating, etc. and receiving user selection for additional information of the movie (e.g., video clip, program information, actor/actress, or full title, etc.) to further refine/sort the list of programs/movies in response to the selection for additional information – see including, but are not limited to, figures 13, 16, 54A, 54E, paragraphs 0111, 115, 118, 0123, 0127-0128, 0132-0133, 0138-0139).

Regarding claim 3, E831 in view of Payton teaches a method as discussed in the rejection of claim 2. E831 further discloses the further descriptive content (e.g. additional information, content title, actor/actress name, air time, or video clip, etc. – figures 6-16, 24) is more descriptive of the available content than previous broadcast descriptive content (e.g. category, type, etc. in main menu, figures 2-3,5).

Regarding claim 4, the limitations that correspond to the limitations of claim 1 are analyzed as discussed in the rejection of claim 1.

the limitation "receiving first feedback from the plurality of clients regarding the content descriptors, the first feedback being an indication from the plurality of clients of the relative desirability of the available content described by the content descriptors" corresponding to the limitation "receiving feedback..." in claim 1, and are analyzed as discussed in the rejection of claim 1.

the limitation "sorting available content in response to the first feedback from the clients" is interpreted as sorting available content by time, by channel, by theme, or by favorite, etc. in response to user selection of display by time, display by channel, display by theme, or display by favorite, etc. see include, but are not limited to, E831, figures 2-3, 5-14);

broadcasting further descriptive content related to at least a first portion of the available content as sorted to the clients (broadcasting descriptive content such as program title, actor/actress, channel, airtime, additional information, or video clip, etc. related to user selection of particular category, type, etc. to users of user television equipments— see include, but are not limited to, E831, figures 5-14, 27, 31);

receiving next feedback from the plurality of clients regarding the further descriptive content (e.g. receiving user selection for additional information, program information, or video clips, etc. from the plurality of users of user television equipments —see include, but are not limited to, E831, figures 5-16, 50, 53A, 53E, 54A);

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sorting the available content in response to the next feedback from user to create the future broadcast schedule (search for available content for additional content such as program title, airtime etc., in response to user selections, to create the future broadcast schedule – see include, but are not limited to, paragraphs 0135-0138), wherein sorting the available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be broadcast (e.g. the selected list of available content prioritizes in order of time in which at least a portion of the available content (e.g., content title, video clip, or program information, etc.) will be broadcast (see include, but are not limited to, paragraphs 0135-0138, 0157, 0181-0182);

broadcasting at least a second portion of the available content to the client in an order responsive to the next feedback from the client as prioritized by the sorting and according to the future broadcast schedule (broadcasting selected content/program listed in the selected list, air times lists, etc. as prioritized by the selected list, or air time list, according to the future broadcast schedule, to users at user television equipments so the selected/sorted content is received at the television equipment for recording or watching – see discussed in the rejection of claim 1 and E831, paragraphs 0196, 213, 0239, 0249-0250).

However, E831 does not explicitly disclose future broadcast scheduled is created in response to feedback from plurality of clients, and broadcast at least a second portion of the available content to the plurality of clients as prioritized by the sorting and according to the future broadcast schedule.

Payton discloses lists 44 of recommended items are updated requests, or preferences received from plurality of subscribers; scheduling processor 46 merges the lists 44 of recommended items to prioritize the items 36 from the most to the least frequently recommended and places identifiers for these items in a refresh queue 47 for broadcast over the digital transport system 26 to the local users (see include, but are not limited to, col. 4, line 35-col. 5, line 57, col. 6, line 64-col. 7, line 12) are read on the limitation "future broadcast schedule is created in response to feedback from plurality of clients" and "broadcasting at least a second portion of the available content to the plurality of clients in an order responsive to the next feedback from the plurality of clients as prioritized by the sorting and according to the future broadcast schedule". Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify E831 to use the teaching as taught by Payton in order to at least improve bandwidth cost effectively (col. 4, lines 35-44).

Regarding claim 5, E831 in view of Payton teaches a method as discussed in the rejection of claim 4. E831 further discloses repeating:

broadcasting further descriptive content (e.g. additional information, video clip, or program information, score, etc.) related to a narrower portion of the available content as sorted to the plurality of clients (see include, but are not limited to, paragraphs 0092, 0099, 0110, 0128, 0138, 0181);

receiving next feedback from the plurality of clients regarding the further descriptive content (receiving selections of additional information, votes, etc. from users

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see include, but are not limited to, paragraphs 0111, 0128, 0132-0133, 0137-0139, 0155, 0167, 0192).

Regarding claim 6, E831 in view of Payton teaches a method as discussed in the rejection of claim 4. E831 further discloses the further descriptive content less expensive to the broadcast to the clients than the available content (since only a portion of the content (i.e., video clip, title, etc.) is broadcast – see include, but is not limited to, figure 13).

Regarding claim 7, E831 in view of Payton teaches a method as discussed in the rejection of claim 4. The claimed feature “the sorting of the available content in response to the next feedback comprises assigning a higher weight to the next feedback than the first feedback” is broadly interpreted as searching/sorting content more related to the second selection (e.g. for movie titles, air times, or detail information, etc., see include, but are not limited to, E831, figures 7, 10, 13-16, 20, 23-24) than the first selection (e.g. a theme, type, etc. – see include, but are not limited to, E831, figures 2-3).

Regarding claim 8, E831 in view of Payton teaches a method as discussed in the rejection of claim 7. E831 further discloses broadcasting of second portion (e.g., program information, or program content as scheduled air times, etc.) in an order further responsive to the first feedback from the plurality of users (in an order responsive to the

users' viewing habits, users' preferences, user profile, or user selections, etc. – see include, but are not limited to, paragraphs 0088, 0092, 0099, 0110, 0118, 0123, 0128, 0131, 0138, 0148, 0158, 0195-0197, 0201-0203, 0213, 0215-0216, 0250).

Regarding claim 9, E831 in view of Payton teaches a method as discussed in the rejection of claim 4. E831 further discloses broadcasting further descriptive content comprises broadcasting partial available content to the plurality of clients (e.g. text and graphics, video clip, etc. advertising pay per view programs or other programs – see include, but are not limited to, figures 7, 8, 13). Payton also discloses broadcast partial content to the plurality of clients (broadcast digital items in item list 44 – see discussed in the rejection of claim 4 above).

Regarding claim 10, E831 in view of Payton teaches a method as discussed in the rejection of claim 9. E831 further discloses users' viewing habits, user selections of particular video clip, vote for a particular program, team, or purchase a pay per view program, feedback information related to movies, etc., are collected (see include, but are not limited to, paragraphs 0131, 0137-0138, 0147), users favorite programs are displayed or automatically recorded (paragraph 0202); and providing hot movies list, popular shows, etc. (paragraphs 0130-0131, 0250). Thus, the further descriptive content broadcast to the plurality clients (users of user television equipments) is kept track, wherein the broadcast of at least a second portion of the available content comprises broadcasting a portion of a remaining portion of the partial available content to the

plurality of clients when the clients select, order the content so that the users can watch or record the remaining portion of a program such as pay per view program or popular show, or hot movie, etc.

Regarding claim 11, E831 in view of Payton teaches a method as discussed in the rejection of claim 4. E831 further discloses the available content comprises at least one of video information, graphical information, or textual information (see include, but are not limited to, figures 7, 8, 12-13, 16).

Regarding claim 12, E831 in view of Payton teaches a method as discussed in the rejection of claim 4. E831 further discloses the further descriptive content comprises at least one of a graphical clip, a textual description (see include, but are not limited to, figures 13, 16, 53E).

Regarding claim 43, the limitations of the apparatus as claimed correspond to the limitations of the method as claimed in claim 4, and are analyzed as discussed with respect to the rejection of claim 4. E831 further discloses the apparatus (television distribution facility and/or user television equipment) comprising:

a processor (processor e.g., part of server 22 for task associated with providing program guide data and other niche hub data to the program guide on the set top boxes) having circuitry to execute instructions (see include, but are not limited to, paragraphs 0100-0101);

a communication interface (i.e. program distribution equipment or interface to user television equipment) coupled to the processor, the communication interface coupled to receive communication from one or more clients (e.g., receiving communication from one or more users of user television equipments – see include, but are not limited to, figures 1a-1d, paragraphs 0088, 0092);

a storage device (e.g. storage device in the server at television distribution facility – see include, but is not limited to, paragraph 0097) coupled to the processor, having instructions stored therein, which when executed cause the apparatus to perform functions as discussed in claim 4.

Regarding claim 44 and 46, the additional limitations of the apparatus as claimed correspond to the additional limitations of the method as claimed in claims 8 and 5, and are analyzed as discussed with respect to the rejection of claims 8 and 5.

Regarding claim 45, E831 in view of Payton teaches a method as discussed in the rejection of claim 43. E831 further discloses the available content includes the further descriptive content (e.g. program title, program description, additional information, etc. – figures 7, 13, 16).

Regarding claim 47, the limitations of the system that correspond to the limitation of the method as claimed in claim 4 are analyzed as discussed with respect to the rejection of claim 44. E831 further discloses the system comprises a server (e.g. television

distribution facility 16 – figure 1a-1d) and one or more clients (users of user television equipments – figures 1a-1d) coupled to the server.

Regarding claims 48-49, the additional limitations of the system as claimed correspond to the additional limitations of the method as claimed in claims 2-3, and are analyzed as discussed with respect to the rejection of claims 2-3.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ellis (2005/0028208 A1) discloses interactive television program guide with remote access.

Ellis (US 2003/0149988 A1) discloses client server based interactive television program guide system with remote server recording.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son P. Huynh

August 22, 2007

A handwritten signature in black ink, appearing to be 'SPH' followed by a stylized flourish.